

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

SUSAN MASON, §
Plaintiff, §
v. § CIVIL ACTION NO. 4:21-CV-3996
LOWE'S COMPANIES, INC., §
Defendant. § JURY TRIAL DEMANDED

DEFENDANT'S NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1441 and Federal Rule of Civil Procedure 81, Defendant LOWE'S COMPANIES, INC., ("Defendant") hereby removes to this Court, the state court action described in Paragraph 1 below. Pursuant to 28 U.S.C. § 1446(a), Defendant sets forth the following "short and plain statement of the grounds for removal."

A. THE REMOVED CASE

1. The removed case is a civil action filed with the 55th Judicial District Court of Harris County, Texas, on or about November 5, 2021; styled *Susan Mason v. Lowe's Companies, Inc.*; Cause No. 2021-72931 (the "State Court Action"). The case arises from an alleged injury allegedly sustained by Plaintiff on October 7, 2021, while at a store located in Harris County.¹

¹ Plaintiff's Original Petition (within Exhibit A to this Notice) at ¶ 4.1.

B. DOCUMENTS FROM REMOVED ACTION

2. Pursuant to 28 U.S.C. 1446(a), Defendants attach the following documents to this Notice of Removal as Exhibit A:

- i. an index of documents within Exhibit A;
- ii. the State-Court Action's docket sheet;
- iii. all executed service of process served on Defendants;
- iv. all pleadings asserting causes of action (e.g., petitions, counterclaims, cross actions, third-party actions, interventions and all answers to such pleadings) served on Defendant; and
- v. all Orders served on Defendants.

C. REMOVAL PROCEDURE

3. Except as otherwise expressly provided by Act of Congress, any civil action brought in a State Court of which the district courts of the United States have original jurisdiction may be removed to the district court of the United States for the district and division embracing the place where the action is pending. 28 U.S.C. § 1441. The Houston Division of the Southern District Court of Texas is the United States district and division embracing Harris County, Texas, the county in which the State Court Action is pending.

4. Defendant was served with a copy of Plaintiff's Original Petition, ("Petition") on November 8, 2021. Thus, this Notice of Removal is filed within the time limits specified in 28 U.S.C. § 1446(b).

5. Defendants will promptly give all parties written notice of the filing of this Notice of Removal and will promptly file a copy of this Notice of Removal with the Clerk of the 55th Judicial District Court of Harris County, Texas, where the action is currently pending.

D. VENUE IS PROPER.

6. The United States District Court for the Southern District of Texas is the proper venue for removal of the state court action pursuant to 28 U.S.C. § 1441(a) because the 55th Judicial District Court of Harris County, Texas, is located within the jurisdiction of the United States District Court for the Southern District of Texas, Houston Division.

E. COMPLETE DIVERSITY OF CITIZENSHIP EXISTS.

7. This is a civil action that falls under the Court's original jurisdiction pursuant to 28 U.S.C. § 1332 and is one that may be removed to this Court based on diversity of citizenship in accordance with 28 U.S.C. §§ 1441 and 1446.

8. As admitted in the Petition, Plaintiff is an individual who resides in Montgomery County, Texas.²

9. Defendant Lowe's Companies, Inc. is a foreign Limited Liability Company organized and existing under the laws of the State of North Carolina. The Limited Liability Company is comprised of six managing members, Akinjide Falaki who is domiciled in and a resident of the State of North Carolina; David R. Green, who is domiciled in and a resident of the State of North Carolina; Beth R. MacDonald who is domiciled in and a resident of the State of North Carolina, Tiffany L. Mason, who is domiciled in and is a resident of the State of North Carolina; Brandon J. Sink, who is domiciled in and a resident of the State of North Carolina, and Gary White, who is domiciled in and a resident of the State of North Carolina. Lowe's Companies, Inc.'s principal office is in Wilkesboro, North Carolina. Pursuant to 28 U.S.C. § 1332(c)(1), Lowe's Companies, Inc. is not a citizen of the State of Texas.

² Plaintiff's Original Petition and Jury Demand (within Exhibit A to this Notice) at ¶ 2.1.

10. Because the Plaintiff is a resident of the State of Texas and Defendant are not, complete diversity of citizenship exists pursuant to 28 U.S.C. § 1332.

11. Thus, the diversity-of-citizenship requirement is satisfied.

F. THE AMOUNT IN CONTROVERSY REQUIREMENT IS SATISFIED.

12. Plaintiff alleges in her Petition that she seeks damages “over \$1,000,000.”³ Plaintiff also seeks to recover damages against Defendants for:

- (a) Past and future medical expenses;
- (b) past and future physical pain;
- (c) past and future mental anguish
- (d) past and future physical impairment
- (e) past and future physical disfigurement;
- (f) past lost wages; and
- (g) future loss of earning capacity.¹⁴

13. Thus, based on all of the aforementioned facts, the State Court Action may be removed to this Court by Defendant in accordance with the provisions of 28 U.S.C. § 1441(a) because: (i) this action is a civil action pending within the jurisdiction of the United States District Court for the Southern District of Texas; (ii) this action is between citizens of different states; and (iii) the amount in controversy exceeds \$75,000, exclusive of interest and costs.

G. FILING OF REMOVAL PAPERS

14. Pursuant to 28 U.S.C. § 1446(d), Defendant is providing written notice of the filing of this Notice of Removal to all counsel of record and is filing a copy of this Notice with the Clerk

³ See Plaintiff's Original Petition (within Exh. A hereto) at ¶ 1.1.

⁴ *Id.* at ¶ 6.1.

of the 55th Judicial District Court of Harris County, Texas, in which this action was originally commenced.

H. CONCLUSION

15. Defendant hereby removes the above-captioned action from the 55th Judicial District of Harris County Texas, and request further proceedings be conducted in the United States District Court for the Southern District of Texas, Houston Division, as provided by law.

Respectfully submitted,

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**ATTORNEYS FOR DEFENDANT
LOWE'S COMPANIES, INC.**

CERTIFICATE OF SERVICE

On December 8, 2021, I am causing a true and correct copy of this document to be served on all counsel of record and pro se parties as follows:

Rodney L. Drinnon	<input type="checkbox"/> E-MAIL
Amanda Gordon	<input type="checkbox"/> HAND DELIVERY
McCathern-Houston	<input type="checkbox"/> FACSIMILE
2000 West Loop South, Suite 1850	<input type="checkbox"/> OVERNIGHT MAIL
Houston, Texas 77027	<input type="checkbox"/> REGULAR, FIRST CLASS MAIL
Email Service:	<input checked="" type="checkbox"/> E-FILE AND SERVE
rdrinnon@mccathernlaw.com	<input type="checkbox"/> E-SERVICE ONLY
agordon@mccathernlaw.com	<input type="checkbox"/> CERTIFIED MAIL/RETURN RECEIPT REQUESTED

COUNSEL FOR PLAINTIFF

/s/ Jason M. Gunderman
Jason M. Gunderman